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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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filed

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

EMC

CALIFORNIA SIDE BY SIDE
SOCIETY, CALIFORNIA
ASSOCIATION OF FIREARMS
RETAILERS, FIFTY CALIBER
SHOOTERS ASSOCIATION,
DOUBLE GUN JOURNAL, SPORTS
AFIELD, BARRETT FIREARMS
MANUFACTURING, INC.,
CALIFORNIA RIFLE AND PISTOL
ASSOCIATION, and ERIC
WILLIAMS,

Plaintiffs,

v.

CONTRA COSTA COUNTY, a
municipality; CONTRA COSTA
COUNTY BOARD SUPERVISOR
JOHN M. GIOIA in his official
capacity; CONTRA COSTA
COUNTY BOARD SUPERVISOR
GAYLE B. UILKEMA in her official
capacity; CONTRA COSTA
COUNTY BOARD SUPERVISOR
MARK DESAULNIER in his official
capacity; CONTRA COSTA
COUNTY BOARD SUPERVISOR
FEDERAL GLOVER in his official
capacity; CONTRA COSTA COUNTY
CLERK OF THE BOARD JANE
PENNINGTON in her official
capacity; CONTRA COSTA
COUNTY SHERIFF WARREN E.
RUPF in his official capacity,

Defendants.

CASE NO.

C 04 21987
**COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF
TO INVALIDATE COUNTY
ORDINANCE
TITLE 42 U.S.C. 1983 AND
RELATED STATE CLAIMS**

DEMAND FOR JURY TRIAL

UNITED STATES CONSTITUTION

1. U.S. CONSTITUTION - FIRST AMENDMENT.
2. DORMANT COMMERCE CLAUSE
3. EQUAL PROTECTION
4. U.S. CONSTITUTION - DUE PROCESS

CALIFORNIA CONSTITUTION AND STATUTORY LAW

5. CALIFORNIA CONSTITUTION - FREE SPEECH
6. CALIFORNIA - EQUAL PROTECTION AND DUE PROCESS GUARANTEES
7. CALIFORNIA STATE PREEMPTION (Penal code 12301 & et seq. 12070 et seq., Government Code section 53071)

1 COME now plaintiffs to allege as follows:

2 **INTRODUCTION**

3 1. This case challenges CONTRA COSTA COUNTY ("CCC") Ordinance
4 No: 2004-10 ("Ordinance"), which provides that "[n]o person shall sell, give,
5 transfer ownership of, transfer, offer for sale, or display for sale any large caliber
6 firearm." The nominal purpose of the Ordinance is to "protect the health, safety, and
7 general welfare of the residents of Contra Costa County by prohibiting the sale of .50
8 caliber firearms in unincorporated areas of the County." This Ordinance subjects
9 those who sell, give, transfer ownership of, transfer, offer for sale, or display for sale
10 any large caliber firearm ("LCF"), including fifty caliber firearms, to prosecution,
11 and threatens firearm sellers who violate this ordinance, including federally licensed
12 retailers, manufacturers and distributors, to prosecution, de-licensure and other
13 administrative sanctions. (A true and correct copy of the Ordinance is attached hereto
14 as Exhibit "A" and incorporated herein by reference.) The Ordinance is invalid in the
15 following respects:

16 2. The Ordinance interferes with and substantially burdens interstate
17 commerce in that its prohibition on the sale of LCF's, *including offers or displays*
18 *for sale* would require plaintiffs, who sell magazines carrying LCF advertisements, to
19 either publish a separate edition for the CCC area or to cease distributing their
20 magazine in CCC. Concomitantly, this interference and burden deprives plaintiffs of
21 their free expression rights to publish and distribute their magazine. Furthermore, the
22 Ordinance impermissibly burdens commercial speech by seeking to prevent CCC
23 firearms dealers from displaying firearms and offering to sell them outside the
24 county, where such transfers are wholly within the law.

25 3. In addition, the Ordinance deprives plaintiffs and others desiring to purchase
26 LCFs of equal protection because it allows such purchases by individual police
27 officers acting in their purely personal capacities as firearms collectors and
28 sportsmen.

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1 claim occurred in the Northern District of California.

3 INTRADISTRICT ASSIGNMENT

4 8. Assignment to the San Francisco Division of the Northern District Court is
5 proper pursuant to Civil L.R. 3-2(c) and (d). The events or omissions which give rise
6 to this claim occurred in Contra Costa County.

8 PARTIES

9 [PLAINTIFFS]

10 9. Plaintiff CALIFORNIA SIDE BY SIDE SOCIETY (hereinafter "CSSS") is
11 a non-profit, mutual-benefit 501(c)(7) tax-exempt California corporation with a
12 constitution, bylaws, board of directors and officers located at 32 Deer Forest Drive,
13 Monterey, CA 93940. The CSSS was founded in 1995 to share the camaraderie of
14 the side by side gun with other collectors and shooters. Today the CSSS has
15 members throughout the western states, including in Contra Costa County,
16 California. CSSS members are men and women dedicated to the collection,
17 preservation, heritage, and enjoyment of the side by side shotgun and rifle.

18 10. No other firearm elicits the romance of history and gunmaking like the
19 side by side. From early American subsistence hunting to Edwardian shoots in 19th
20 Century England and dangerous-game exploits in 20th Century Africa and India has
21 come a fascination with the side by side gun and a renaissance of interest among
22 modern collectors and sportsmen and women. Members of the CSSS are as diverse
23 as the guns they collect. Some have a love affair with a particular maker (Purdey,
24 L.C.Smith, Piotti, and many more). Others have a fascination for a particular type of
25 action (hammer, hammerless, sidelock, boxlock, sidelever, under lever, etc.). From
26 muzzleloaders to breechloaders, black powder to nitro, and small bore to .50 caliber
27 rifles and larger, members' varied interests spark much discussion--but the common
28 factor among all the members is that they enjoy collecting side by side firearms,

1 displaying them, and in most cases shooting them. Social gatherings with display of
2 fine guns, catered lunch, guest speakers and an organized shoot are offered four
3 times each year. "Fun Shoots" are also offered, usually six times per year. Hunting
4 events are organized and sponsored on a statewide basis. The CSSS maintains an
5 active Web site and email system. A newsletter is sent to all members quarterly and
6 posted on the Web site. Inquiries may be sent via email, telephone, fax or postal
7 mail.

8 11. CSSS appears in this action on its own behalf and on behalf of its
9 members, including members within CCC. CSSS's members would otherwise have
10 standing to sue in their own right; the interests CSSS seeks to protect are germane to
11 the organization's purpose; and neither the claims asserted nor the equitable relief
12 requested herein requires the participation of individual CSSS members in this
13 lawsuit.

14 12. Plaintiff CALIFORNIA ASSOCIATION OF FIREARMS RETAILERS
15 (hereinafter "CAFR") is a non-profit, mutual-benefit 501(c)(6) tax-exempt California
16 corporation with a constitution, bylaws, board of directors and officers with, its
17 initial agent for service process located at 407 North Harbor Boulevard, San Pedro,
18 CA 90731. CAFR is a organization of businessmen involved in the distribution and
19 retail sales of firearms. Its purposes are to provide federally licensed firearm
20 retailers in California with a unified voice in regulatory and legislative affairs and to
21 pursue professional development opportunities and the promotion of responsible
22 business practices by fostering active membership participation in relations between
23 firearm retailers, industry, community, and government.

24 13. CAFR represents its members, including firearm dealers and sellers
25 within CCC, future CCC firearm dealers, and their customers whose interests are in
26 stopping enforcement of the unlawful Ordinance, clarifying the meaning of the
27 Ordinance and its validity, and determining its application to them and to their
28 property. CAFR members already do, and wish to continue to sell, give, transfer

1 ownership of, offer for sale, or display for sale rifles, activities which would be
2 prohibited by the Ordinance.

3 14. CAFR appears in this action on its own behalf and on behalf of its
4 members, including firearm dealers and sellers within CCC (and, indirectly, their
5 customers). CAFR's members would otherwise have standing to sue in their own
6 right; the interests CAFR seeks to protect are germane to the organization's purpose;
7 and neither the claims asserted nor the equitable relief requested herein requires the
8 participation of individual CAFR members in this lawsuit.

9 15. Plaintiff FIFTY CALIBER SHOOTERS ASSOCIATION (hereinafter
10 "FCSA") is a non-profit membership organization under the laws of Tennessee with
11 bylaws, board of directors and officers, and is registered as a 501(c)(7) corporation
12 that is headquartered in Monroe, Utah 84754.

13 16. FCSA was established in 1985 for the purpose of advancing the sporting
14 and other lawful uses of the fifty caliber cartridge. FCSA publishes a monthly
15 magazine, "Very High Power," that is distributed internationally and throughout the
16 United States. "Very High Power" contains advertisements that are "offers to sell"
17 fifty caliber firearms. Additionally, FCSA promotes their organization through their
18 website at www.FCSA.org. This website contains a members only area that includes
19 classified advertisements from members offering to sell or desiring to purchase
20 LCF's. Among its other activities, FCSA provides research, instruction, and serves
21 as a liaison between military and law enforcement communities. All sanctioned
22 FCSA shooting competitions are conducted according to rules established by the
23 shooting members and published in the FCSA competition rules manual. FCSA
24 members join to promote the sporting aspects of fifty caliber shooting. FCSA has
25 over 4,000 members, including members residing in CCC and within California
26 generally. These CCC and California resident members include numerous persons
27 who wish to purchase rifles from a firearms dealer, including rifles that fall under the
28 Ordinance's definition of "large caliber firearm." FCSA is continually contacted by

1 its members who seek advice on the meaning of the CCC Ordinance and its legality.
2 FCSA must expend staff and attorney time, as well as costs, in responding to those
3 member inquiries.

4 17. FCSA sues on its own behalf, in its representative capacity on behalf of
5 members in CCC and in California, generally. FCSA's members would otherwise
6 have standing to sue in their own right; the interests it seeks to protect are germane to
7 the organization's purpose; and neither the claims asserted nor the relief requested
8 herein requires the participation of individual members in this lawsuit.

9 18. Plaintiff DOUBLE GUN JOURNAL (hereinafter "DGJ") is a partnership
10 under the laws of Michigan, where the DGJ headquarters is located. DGJ first
11 journal was published in 1990 for the purpose of preserving and circulating
12 knowledge about double-barrel guns. DGJ publishes a quarterly journal, "DOUBLE
13 GUN JOURNAL," that is distributed internationally and throughout the United
14 States. "DOUBLE GUN JOURNAL" contains advertisements that are "offers to
15 sell" and/or "displays for sale" of Holland and Holland Rifles such as the .577 NE
16 Royal Deluxe Double Rifle, which costs \$140,000.00 but is classified as an LCF
17 under the Ordinance. (Sample advertisement of .500/465 Royal Double Rifle costing
18 \$120,000 is attached as Exhibit B.) These advertisements constitute "offers for sale"
19 and/or "displays for sale" of LCFs. DGJ subscribers purchase the journals for the
20 articles written by experts in the field of fine firearms, including LCFs. DGJ has
21 subscribers throughout the nation, including members residing in CCC and
22 California generally. The DGJ sues on its own behalf, in its representative capacity,
23 and on behalf of its subscribers in CCC.

24 19. Plaintiff SPORTS AFIELD is a California Corporation. SPORTS
25 AFIELD is America's original outdoor magazine, founded in 1887. It is devoted to
26 people who share a passion for high-end sporting pursuits, especially big-game
27 hunting in North America and Africa. The magazine focuses primarily on hunting
28 bears, elk, moose, caribou, trophy whitetails and mule deer, and bighorn sheep, as

1 well as African plains game and dangerous animals such as Cape buffalo, lion, and
2 leopard. In-depth articles about upland hunting for species such as quail and
3 pheasant are also featured. Coverage of fine guns, optics, clothing, and equipment is
4 an essential part of the magazine. SPORTS AFIELD runs regular departments in
5 every issue that provide sound, practical advice to the serious hunter and shooter.
6 These columns include Rifles, Shotguns, Survival, The Traveling Hunter, An
7 Outfitter's View, Backcountry, Reports Afield, New Gear Review, and the Almanac,
8 which features news, tips, facts, and lore for the true outdoorsman. SPORTS
9 AFIELD derives its income from advertisements, which include advertisements such
10 as the Dakota Arms, Inc., .570 Nitro Express which is deemed a LCF under the
11 Ordinance. (See Exhibit C.) These advertisements are displays for sale and/or offers
12 for sale of firearms prohibited by defendants' Ordinance.

13 20. Plaintiff BARRETT FIREARMS MANUFACTURING, INC. (hereinafter
14 referred to as BARRETT) is a Tennessee S Corporation with it's headquarters in
15 Murfreesboro, Tennessee. BARRETT was founded in 1983. BARRETT has become
16 the premier manufacturer of .50 caliber rifles. Acceptance by shooters and utilization
17 by law enforcement has proven them of outstanding reputation. BARRETT rifles are
18 renowned for their quality, performance and safety. BARRETT is dedicated to the
19 manufacture of high quality rifles and accessories for the sporting and law
20 enforcement marketplace. BARRETT avidly supports firearm safety, responsibility,
21 and the rights of individuals to keep and bear arms according to the Second
22 Amendment of the United States Constitution. In Murfreesboro, Tennessee,
23 BARRETT is actively producing high-grade rifles and other products. BARRETT
24 advertises its products, including the California legal "Model 99," in magazines such
25 as "Very High Power" and on the internet at www.barrettrifles.com. These display
26 advertisements of fifty caliber centerfire rifles that are deemed LCFs under the
27 Ordinance and are distributed to Contra Costa County residents. These
28 advertisements are displays for sale and/or offers for sale of firearms prohibited by

1 defendants' Ordinance.

2 21. Plaintiff CALIFORNIA RIFLE AND PISTOL ASSOCIATION
3 (hereinafter CRPA) is a non-profit membership organization and is incorporated
4 under the laws of California, with headquarters in Fullerton. Among its other
5 activities, CRPA works to preserve and expand constitutional and statutory rights of
6 gun ownership, including the right to self-defense and the right to keep and bear
7 arms. CRPA has 65,000 members, including members residing in Contra Costa
8 County who are members of the U.S. Armed Forces and police officers who desire to
9 purchase, sell, give, transfer, offer for sale and/or display for sale firearms deemed
10 LCFs under the Ordinance.

11 22. CRPA sues on its own behalf, in its representative capacity on behalf of
12 members in CCC and in California, generally. CRPA's members would otherwise
13 have standing to sue in their own right; the interests it seeks to protect are germane to
14 the organization's purpose; and neither the claims asserted nor the relief requested
15 herein requires the participation of individual members in this lawsuit.

16 23. Plaintiff ERIC WILLIAMS (hereinafter referred to as "WILLIAMS") is
17 a resident that owns property within Contra Costa County unincorporated.
18 WILLIAMS pays property taxes on this property to Contra Costa County.
19 WILLIAMS completed training to be a level three reserve officer for the City of
20 Berkeley. WILLIAMS currently is employed as a software engineer for the
21 Lawrence Berkeley Laboratory (a national laboratory under the Department of
22 Energy). For the past four years WILLIAMS has attended and competes in
23 tactical rifle competitions at the Sacramento Shooting Center in Sacramento,
24 California. WILLIAMS is currently the Match Director for these events.
25 WILLIAMS is a certified rifle, pistol, personal protection and home firearm safety
26 instructor. WILLIAMS desires to purchase a firearm that is deemed a LCF by the
27 Ordinance. The Ordinance prohibits WILLIAMS from acquiring additional firearms
28 that are deemed LCFs and that are otherwise lawful.

1 new Ordinances, and for de-publishing illegal Ordinances.

2
3 **FIRST CLAIM FOR RELIEF:**

4 **DENIAL OF FREE SPEECH RIGHTS**

5 **(FEDERAL CONSTITUTION - FIRST AMENDMENT)**

6 **(By Plaintiff PUBLISHERS and CAFR Against all Defendants)**

7 [DENIAL OF FREE PRESS RIGHTS OF

8 NATIONAL AND INTERNATIONAL PUBLICATION COMPANIES]

9 32. Section 54-22.006, created by the Ordinance, prohibits any "offer for sale,
10 or display for sale" of an LCF. As hereinbefore alleged, PUBLISHER plaintiffs
11 distribute magazines, journals, and/or newsletters that contain advertisements (both
12 commercial "display" advertisements and/or classified ads) that constitute offers for
13 sale and/or displays for sale of LCFs.

14 33. These advertisements often include pictures that constitute offers and/or
15 displays for the sale of LCFs.

16 34. By banning these advertisements and/or displays for sale of LCF's, the
17 Ordinance is depriving PUBLISHERS (and their members and their advertisers
18 whose rights PUBLISHERS properly represent in this suit) of their rights to
19 commercial free expression - freedom of the press.

20 35. A national and international sporting magazine published by FCSA,
21 "Very High Power Magazine," which is circulated in CCC, but is published in the
22 state of Washington, is subject to criminal prosecution because it prints
23 advertisements that constitute an "offer" or "display for sale" of LCFs. The only
24 alternative for "Very High Power Magazine," is for its Washington-based publisher
25 to discontinue accepting such advertisements in order to comply with CCC's
26 Ordinance or prohibit distribution to CCC. The practical effect is to allow CCC to
27 set a national standard for the advertising of certain rifles.

28 36. A national and international sporting journal published by DGJ, "Double

1 Barrel Journal,” which is circulated in CCC, but is published in the state of
2 Michigan, is subject to criminal prosecution because it prints advertisements that
3 constitute an “offer” or “display for sale” of LCFs. The only alternative for “Double
4 Barrel Journal,” is for its Michigan-based publisher to discontinue accepting such
5 advertisements in order to comply with CCC’s Ordinance or prohibit distribution to
6 CCC. The practical effect is to allow CCC to set a national standard for the
7 advertising of certain rifles.

8 37. A national and international sporting magazine published by SPORTS
9 AFIELD, “Sports Afield Magazine,” which is circulated in CCC, but is published in
10 Huntington, California, is subject to criminal prosecution because it prints
11 advertisements that constitute an “offer” or “display for sale” of LCFs. The only
12 alternative for “Sports Afield Magazine,” is for its California based publisher to
13 discontinue taking such advertisements in order to comply with CCC’s Ordinance or
14 prohibit distribution to CCC. The practical effect is to allow CCC to set a national
15 standard for the advertising of certain rifles.

16 38. BARRETT is a manufacturer of firearms that advertises its product
17 deemed to be LCFs by the Ordinance in “Very High Power” and other nationally
18 distributed publications. BARRETTs advertisements are distributed in CCC,
19 subjecting BARRETT to criminal prosecution because these advertisements
20 constitute an “offer” and/or “display” for sale of LCFs within CCC’s jurisdiction.
21 Similarly, BARRETTs distributes similar advertisements on their website at
22 www.barrett-rifles.com. The only lawful alternative for BARRETT to avoid
23 criminal prosecution is to not advertise their product in publications that are
24 distributed within CCC and to cease all advertising of their product on the internet.
25 The practical effect is to allow CCC to set a national standard for the advertising of
26 certain rifles.

27 39. The interests here involved are not limited to commercial speech. Though
28 income from advertisements are vital to the existence of PUBLISHERS magazines,

1 journals, and/or newsletters, they are not their principal fare. The primary material in
2 PUBLISHERS' (excluding BARRETT) magazines, journals, and/or newsletters
3 consist of core non-commercial speech – discussions that are technical,
4 technological, educational, historical, social, economic and/or political. The effect of
5 the Ordinance is to bar PUBLISHERS magazines, journals and/or newsletters from
6 being distributed in CCC.

7 40. The Ordinance has such an effect because PUBLISHERS cannot afford to
8 do without the remuneration which they derive from ads that offer and/or display
9 LCF's for sale. Neither can they afford to produce a special CCC edition sans the
10 revenue derived from these advertisements. PUBLISHERS only option if they
11 comply with the Ordinance would be not to distribute PUBLISHERS magazines,
12 journals and/or newsletter in CCC or to refuse any advertisements that offer or
13 display LCF's for sale despite the fact that the LCFs are currently legal for sale
14 throughout the entire United States.

15 41. As hereinbefore set out, acting under color of law, defendants have and
16 are depriving PUBLISHERS, their members and their advertisers of rights, privileges
17 and immunities guaranteed them by the federal Constitution, to wit, the First and
18 Fourteenth Amendments.

19 42. Plaintiffs are being irreparably injured and have no plain, speedy or
20 adequate remedy at law.

21 43. There is an actual and present controversy between defendants on the one
22 hand, and PUBLISHERS, their members and their advertisers on the other.

23 44. PUBLISHERS and their advertisers assert that the Ordinance
24 impermissibly infringes upon their core free expression rights to engage in
25 distribution of their magazines, journals, and/or newsletters in CCC and elsewhere as
26 well as their commercial speech rights. Defendants deny and dispute this, wherefore
27 PUBLISHERS seek a declaration of their rights and those of their advertisers and,
28 specifically, that the Ordinance violates the First Amendment.

[DENIAL OF FREE SPEECH RIGHTS
OF CCC FIREARMS DEALERS]

45. Plaintiffs reallege all previous paragraphs and incorporate them herein as if set out verbatim.

46. Defendants' legislative authority – and, thus, the Ordinance – extends only to CCC. Defendants cannot prohibit transfers, etc., of LCF's occurring in other locations. Thus, for instance, defendants cannot prohibit even CCC-based firearms dealers from transferring LCF's at such locations, including at gun shows held outside the county and including transfers to CCC residents at such non-CCC locations. California law specifically authorizes licensed firearms dealers to make sales and transfers at gun shows, wherever held.

47. Because such sales cannot be prohibited by defendants, current or prospective CCC firearms dealers represented by CAFR are entitled to: a) in their CCC stores display LCFs and offer them for sale, so long as the sale would occur outside of CCC; and b) display and offer LCFs for sale in advertisements in PUBLISHERS' magazines, journals, newsletters, and websites as well other publications such as newspaper classifieds. In purporting to prohibit such displays and offers, defendants are denying current and future CCC firearms dealers represented by CAFR, and similarly situated individuals, the freedom of expression guaranteed them by the First Amendment.

48. There is an actual and present controversy between defendants and CAFR. CAFR asserts that the Ordinance impermissibly trenches on their members' freedom of expression. Defendants deny and dispute this, wherefore plaintiff CAFR seeks a declaration of its (and its members') rights and, specifically, that the Ordinance is unconstitutional in this respect.

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SECOND CLAIM FOR RELIEF:
VIOLATION OF THE DORMANT COMMERCE CLAUSE
(FEDERAL CONSTITUTION - ARTICLE I, SECTION 8, CLAUSE 3)
(By PUBLISHERS Against all Defendants)

49. Plaintiffs reallege all previous paragraphs and incorporate them herein as if set out verbatim.

50. With some exceptions, the Ordinance prohibits “offers to sell” and “the display for sale” of any firearm capable of firing a center-fire cartridges of .50 caliber or larger or .50 BMG caliber or larger, either by designation or by actual measurement.

51. The Ordinance has impermissible extraterritorial effect.

52. The Ordinance regulates and applies to commerce that occurs wholly outside California’s borders. It prohibits the advertisements (“offers to sell” and/or “displays for sale”) of certain weapons regardless of the means of distribution, including but not limited to, magazines, newspapers, circulars, form letters, open publications, billboards, cards, or labels, that are published, circulated, or distributed in CCC.

53. Certain PUBLISHERS suffer additional damages. The operator of any website anywhere in the world that is offering or displaying LCF’S for sale is arguably violating the Ordinance because there is no feasible way to avoid making that offer accessible to people within CCC. FCSA, for one, operates such websites.

54. A publisher of a national magazine, journal and/or newsletter or website that contains “offers to sell” and/or a “display for sale” of LCFs that are prohibited by the Ordinance is faced with avoiding CCC altogether; complying with CCC’s more restrictive Ordinance by removing advertisements that are “offers for sale” and/or “displays for sale” from their magazine, despite the fact that other municipalities within California and other states in which the magazine, journal, and/or newsletter is distributed would permit these “offers” and “displays to sell,” or

1 publish a separate edition for CCC in which prohibited advertisements “offering to
2 sell” LCFs are excised.

3 55. This Ordinance causes PUBLISHERS to incur prohibitive costs and
4 constitutes an impermissible burden upon interstate commerce.

5 56. The benefits of the Ordinance do not outweigh the burden since, among
6 many other reasons: few, if any, LCFs are ever sold or transferred within CCC; no
7 LCF has been used in a crime within CCC; the State already regulates LCFs (which
8 it defines as anything greater than .60 caliber as opposed to .50 or greater as the
9 Ordinance defines it); and the Ordinance substantially interferes with interstate
10 commerce in publishing, including but not limited to, magazines, journals,
11 newsletters, newspapers and/or websites that include advertisements and classifieds
12 that offer and/or display LCFs for sale.

13 57. The Ordinance imposes a clearly excessive burden in relation to the
14 putative local benefit to the CCC. Less restrictive methods of obtaining CCC’s goals
15 are available.

16 58. As hereinbefore alleged, acting under color of law, defendants have and
17 are denying plaintiffs and those similarly situated of rights preserved to them by the
18 Commerce Clause of the United States Constitution.

19 59. There is an actual and present controversy between defendants and FCSA.
20 FCSA asserts that the Ordinance impermissibly trenches on their freedom of action
21 under the Commerce Clause. Defendants deny and dispute this, wherefore plaintiff
22 FCSA seeks a declaration of its rights and those of its advertisers and, specifically,
23 that the Ordinance is unconstitutional in this respect.

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THIRD CLAIM FOR RELIEF:**DENIAL OF EQUAL PROTECTION****(FEDERAL CONSTITUTION-14TH AMENDMENT)****(By Plaintiffs WILLIAMS, CAFR and FCSEA Against All Defendants)**

60. Plaintiff reallege all previous paragraphs and incorporate them herein as if set out verbatim.

61. The Ordinance allows law enforcement agencies and both federal and local police officers to purchase LCF's. (Ordinance, sec. 54-22.008 (b) 1-6.) But the exceptions for federal and state police officers are nowhere limited to the tiny number of officers using LCFs for official duty purposes. As written, these exemptions allow every federal and state police officer to purchase an LCF for purely private purposes, e.g., as an addition to a personal gun collection or for hunting or target shooting.

62. If private persons are not allowed to purchase LCFs for addition to their personal gun collection or for hunting or target shooting or other purely private purposes there is no reason why police officers should be allowed to do so without any connection to their official duties. Such a distinction bears no rational relation to the purposes of the Ordinance, nor does it bear any relationship to the safety and/or welfare of the people of CCC. Rather, it merely creates a subclass of private citizens that are provided the privilege to purchase LCF's while the majority of the citizenry is denied that privilege.

63. But for the ordinance, these plaintiffs would continue to possess, sell, and acquire LCF's on page 18 and there are a lot of lies. The ordinance forces them into the dilemma of risking prosecution or removing their property from the County and thus losing the use thereof.

64. The federal and state police officer exemptions constitute a deprivation under color of law of rights, privileges and immunities guaranteed to plaintiffs by the equal protection clause of the 14th Amendment.

1 65. There is an actual and present controversy between plaintiffs and
 2 defendants as to the constitutionality of the Ordinance's police officer exemptions.
 3 Plaintiffs contend, and defendants deny, that these exemptions are repugnant to the
 4 equal protection clause of the 14th Amendment. Wherefore plaintiffs seek a
 5 declaration of their rights and, specifically, that the Ordinance is unconstitutional in
 6 this respect.

7
 8 **FOURTH CLAIM FOR RELIEF:**
 9 **VIOLATION OF FEDERAL DUE PROCESS**
 10 **(FEDERAL CONSTITUTION-14TH AMENDMENT)**

11 **(By WILLIAMS, CAFR, AND FCSA Against All Defendants)**

12 66. Plaintiffs reallege all previous paragraphs and incorporate them herein as
 13 if set out verbatim.

14 67. The due process rights of Americans include the rights to acquire, enjoy
 15 and dispose of property. These rights may be circumscribed as to particular property
 16 by **valid** legislation. The Ordinance is invalid because, as hereinafter alleged, it is in
 17 conflict with, and preempted by, state law.

18 68. The Ordinance states that "no person shall sell, give, transfer ownership
 19 of, transfer, offer for sale, or display for sale any large caliber firearm." The
 20 Ordinance, thus, deprives plaintiffs of due process in the following respects: it
 21 precludes their acquiring of LCF's in CCC; it precludes their transferring to another
 22 person on the target range, or at an exhibition for the purposes of examining or firing
 23 their LCF's even temporarily; and it precludes their selling or even offering for sale
 24 their LCF's.

25 69. There is an actual and present controversy between plaintiffs and
 26 defendants as to the constitutionality of the Ordinance. Plaintiffs contend, and
 27 defendants deny, that the Ordinance is repugnant to the due process clause of the 14th
 28 Amendment. Wherefore plaintiffs seek a declaration of their rights and, specifically,

1 that the Ordinance is unconstitutional in this respect.

2
3 **FIFTH CLAIM FOR RELIEF:**
4 **VIOLATION OF FREE SPEECH GUARANTEES**
5 **(CALIFORNIA CONSTITUTION - ARTICLE I SECTION 2)**
6 **(By All Plaintiffs Against All Defendants)**

7 70. Plaintiffs reallege all previous paragraphs and incorporate them herein as
8 if set out verbatim.

9 71. For the reasons stated above with regard to the United States Constitution,
10 the Ordinance also violates the free press and speech provisions of the California
11 Constitution.

12 72. There is an actual and present controversy between plaintiffs and
13 defendants as to the constitutionality of the Ordinance. Plaintiffs contend, and
14 defendants deny, that the Ordinance violates the free press and speech provisions of
15 the California Constitution. Wherefore plaintiffs seek a declaration of their rights
16 and, specifically, that the Ordinance is unconstitutional in this respect.

17
18 **SIXTH CLAIM FOR RELIEF:**
19 **EQUAL PROTECTION AND DUE PROCESS GUARANTEES**
20 **(CALIFORNIA CONSTITUTION - ARTICLE I SECTION 7)**
21 **(By WILLIAMS, CAFR, CSSS, FCSA Against All Defendants)**

22 73. Plaintiffs reallege all prior paragraphs and incorporate them herein as if
23 set out verbatim.

24 74. For the reasons stated above with regard to the United States Constitution,
25 the Ordinance also violates the due process and equal protection guarantees of the
26 California Constitution.

27 75. There is an actual and present controversy between plaintiffs and
28 defendants as to the constitutionality of the Ordinance. Plaintiffs contend, and

1 defendants deny, that the Ordinance violates the due process and equal protection
 2 guarantees of the California Constitution. Wherefore plaintiffs seek a declaration of
 3 their rights and, specifically, that the Ordinance is unconstitutional in this respect.

4
 5 **SEVENTH CLAIM FOR RELIEF:**
 6 **CALIFORNIA STATE PREEMPTION**
 7 **(CALIFORNIA CONSTITUTION ARTICLE XI SECTION 7**
 8 **PEN. CODE §12301 ET SEQ. & 12070 ET SEQ.; GOV'T CODE §53071;)**
 9 **(By All Plaintiffs Against All Defendants)**

10 76. Plaintiffs reallege and incorporate herein all foregoing paragraphs as if set
 11 out verbatim.

12 77. Defendants' Ordinance is preempted by California Constitution Article XI
 13 section 7 because it duplicates state enactments, it prohibits what the State permits,
 14 and California law fully occupies the particular field of "large caliber firearms"
 15 legislation to the extent that there is no room for local regulation. Defendants'
 16 attempts to impose additional regulations in that field conflict with the state law, and
 17 are therefore void, even if a particular provision in the Ordinance does not directly
 18 duplicate or otherwise directly conflict with any express provision of the state law.

19 78. Defendants ordinance is also preempted by Penal Code sections 12301 et
 20 seq., as its legislative history clearly demonstrates that the State exclusively regulates
 21 and occupies the entire field of firearms based upon their destructive capabilities, i.e.,
 22 large caliber firearms /military type weapons / destructive devices, regardless of the
 23 label placed upon such weapons, and because the Ordinance conflicts with the
 24 State's specific and expressed intent to limit such regulations and licensing to
 25 firearms *exceeding* .60 calibers.

26 ///

27 ///

28 ///

[REPORT OF THE ASSEMBLY INTERIM COMMITTEE
ON CRIMINAL PROCEDURE
ON SEARCH AND SEIZURE, PREEMPTION; WATTS;
FIREARMS CONTROL]

79. In 1966, an interim study of the weapons control laws in California was conducted by the Assembly Committee on Criminal Procedure ("Committee"). The final result, completed January 1967, was the "Report of the Assembly Interim Committee on Criminal Procedure on Search and Seizure, Preemption, Watts, Firearm Control" ("Report"):

The committee did not undertake a general study of the subject of firearms control during the 1965-1967 interim period [because the committee already conducted a general study of the subject during the 1963-1965 interim period]. However, in the course of the committee's hearings on the Los Angeles riot the Attorney General of California and officers of the Los Angeles Police Department pointed out certain defects in the law governing the control of weapons. The committee felt that the problems pointed out by these officials were sufficiently serious to warrant holding a hearing for the purposes of taking additional testimony on the subject.

80. The Report describes the investigation that the Committee conducted on the issue of large caliber firearms:

On October 13, 1966, the committee attended a demonstration firing, arranged by the Attorney General, to observe the operation and effect of certain military-type weapons and new firearms now generally available to private citizens in California. The following day, October 14, 1966, the committee convened in Los Angeles to take testimony from Attorney General Lynch, officials of the Los Angeles Police Department, and private citizens interested in weapons controls.

81. As a result of these hearings, the Committee became concerned over the availability in California of antitank guns and other military type weapons:

The tremendous destructive potential of these weapons make them unfit for use outside the confines of a military reservation but they are nevertheless readily available through mail order houses and retail outlets around the state. While we have extensive provisions in the Penal Code regulating the sale and possession of concealable weapons there are no statutes regulating the sale or possession of military armaments.

82. The Report recommended legislation prohibiting the sale, possession, or transportation of these devices, but excepted, through a lower caliber limit, firearms that serve legitimate sporting and hunting purposes:

1 Since the definition of a “destructive device” is written in terms of fixed
 2 ammunition of more than .60 caliber and firearms of more than .60
 3 caliber which fire such ammunition, it will not restrict the activities of
 4 those who collect or target shoot with large caliber antique weapons....”
 5 By limiting the definition of a “destructive device” to firearms and
 6 ammunition of more than .60 caliber and excluding shotguns and
 7 their ammunition the committee intends that the recommended
 8 legislation not restrict the sale or use of firearms used for hunting or
 9 target shooting. The .60 caliber limitation appears to be a reasonable
 10 dividing line since that is the distinction which the United States Army
 11 draws between small and heavy arms. (Multiple emphasis added.)

12 83. In the Report, the Committee specifically recommended that the “sale,
 13 possession, or transportation of ‘destructive devices’ such as . . . ‘large caliber arms
 14 and ammunition’ be prohibited.” (Emphasis added.)

15 84. The Attorney General presented evidence to the Assembly Committee on
 16 Criminal Procedure during its study, and brought to the attention of the Committee
 17 several inadequacies in the existing regulations of deadly and dangerous weapons.

18 [ASSEMBLY BILL 1326]

19 85. As a result of the Report, on March 28, 1967 Assemblyman W. Craig
 20 Biddle (Vice Chairman of the Assembly Committee on Criminal Procedure)
 21 proposed AB1326, which added Chapter 2.5 (commencing with Section 12301) to
 22 Title 2 of Part 4 of the Penal Code, regulating and licensing “destructive devices” by
 23 requiring every dealer, manufacturer, importer and exporter of certain defined
 24 devices and every person possessing or transporting any such device, to obtain State
 25 issued permits, and providing penalties for violations.

26 86. On August 4, 1967, having been passed by both the Assembly
 27 (unanimously) and the Senate (24 ayes to 2 noes), AB1326 was enrolled and sent to
 28 Governor Ronald Reagan for signing.

87. Also on August 4, 1967, the author of AB1326, Assemblyman W. Craig
 Biddle, sent Governor Reagan an Analysis and Explanation of AB1326. The
 analysis detailed that the lesser calibers (such as .50 caliber rifles) were considered
 and intentionally exempted from the permit requirements imposed by AB1326
 through the use of a caliber limit:

1 By limiting its application to weapons larger than .60 caliber, the bill
2 will not restrict the use of known hunting weapons. [Because many
3 shotguns exceed .60 calibers in size, and would otherwise be prohibited
by this limitation, a] specific exemption for shotguns is incorporated in
the bill.

4 This bill was supported by the Attorney General, the California District
5 Attorneys' Association, California Peace Officers' Association, and the
National Rifle Association.

6 In fact, many other letters to Governor Reagan repeat the same intent of the
7 State to exclude from prohibitions based upon destructive capabilities and to allow
8 the unimpeded sale of firearms of .60 calibers or less.

9 88. In an August 14, 1967 letter to Governor Reagan from Deputy Attorney
10 General Harold F. Bradford, the bill's scope is described as follows:

11 Assembly Bill 1326 deals with weapons and devices which are
12 commonly referred to as "military-type weapons" and "heavy
13 weapons"; such weapons are referred to in the bill as Destructive
14 Devices. With the exception of minor regulations relating to explosives
or fire hazards, there are presently no laws in California which regulate
the military surplus and similarly large weapons which are available on
the open market. These military weapons and similar devices are
extremely hazardous and possess great destructive capacity; they have
no legitimate sport or hunting value, and the need for regulation of such
devices is clear.

16 Also included within the definition of "Destructive Devices" are
17 weapons which fire fixed ammunition or which launch rockets, as well
18 as the ammunition and the rockets for such weapons, if the weapons are
of a caliber larger than .60 calibre [sic]; an example of a weapon which
would be included in this category are the anti-tank cannons which have become

19 This letter emphasized that the purpose of placing a lower limit of caliber size
20 at .60 caliber was that "by limiting its application to weapons larger than .60 calibre
21 [sic], the bill will not restrict the use of known hunting weapons."

22 89. In an August 15, 1967 Bill Memorandum to Governor Reagan, Senate
23 Legislative Secretary Vernon L. Sturgeon and Assembly Legislative Secretary Jack
24 B. Lindsey noted that:

25 Also included within the definition of weapons which fire fixed
26 ammunition for such weapons, if the weapons are of a calibre [sic]
27 larger than .60 caliber; an example of a weapon which would be
included in this category are the anti-tank cannons which have become
available through military surplus sources.

28 *It is important to note that Assembly Bill 1326 applies only to
weapons. . . . By limiting its application to weapons larger than .60*

1 *caliber, the bill will not restrict the use of known hunting weapons,*
2 *and a specific exemption for shotguns is incorporated in the bill.*
3 *(Emphasis added.)*

4 90. On August 18, 1967, Governor Reagan signed AB1326, thereby creating
5 Penal Code section 12301 et seq.

6 [Penal Code 12301 et. Seq.]

7 91. California's state "Destructive Device" law comprehensively covers those
8 rifles that the Legislature deemed appropriate to specially regulate because of caliber
9 size and degree of destructiveness. The Destructive Device law regulates and
10 licenses only firearms having a caliber greater than .60, but does not cover firearms
11 of .50 caliber. (A particular rifle of .50 caliber, the Barrett M82 rifle (as configured
12 by the Manufacturer) is classified, and subjected to special regulation, as an "assault
13 weapon.")

14 92. The Ordinance is an attempt to redefine, substitute for and add to the
15 Destructive Device Law, extending it from firearms capable of firing fixed
16 ammunition greater than .60 caliber to include lesser firearms of only .50 caliber.

17 93. California's state Destructive Device law is a comprehensive regulatory
18 scheme governing devices that the State Legislature deemed to be destructive devices
19 including, but not limited to, firearms that fire ammunition exceeding a certain
20 caliber in size due to the destructive capabilities of these firearms. The state scheme
21 is a comprehensive one, defining on a statewide basis which firearms should be
22 regulated based upon the caliber and destructive capability. No local regulation of
23 firearms within that subject is permissible. Local ordinances regulating firearms
24 based upon caliber and destructive capabilities are impermissible. The state has set
25 the level at which "large caliber firearms" are to be regulated because of caliber and
26 destructive capacity as any firearm that can fire fixed ammunition greater than 0.60
27 caliber.

28 94. Specifically, Penal Code section 12301(a)(3) defines "destructive devices"
as including:

any weapon of a caliber greater than 0.60 caliber which fires fixed ammunition, or any ammunition therefor, other than a shotgun (smooth or rifled bore) conforming to the definition of a "destructive device" found in subsection (b) of Section 179.11 of Title 27 of the Code of Federal Regulations, shotgun ammunition (single projectile or shot), antique rifle, or an antique cannon. For purposes of this section, the term "antique cannon" means any cannon manufactured before January 1, 1899, which has been rendered incapable of firing or for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade. The term "antique rifle" means a firearm conforming to the definition of an "antique firearm" in Section 179.11 of Title 27 of the Code of Federal Regulations.

95. Within California Penal Code section 12305, the State Legislature provides a detailed regulatory licensing mechanism of *exceptions to the prohibition* on possession and transportation of any firearm that can fire a cartridge greater than .60 caliber:

(a) Every dealer, manufacturer, importer, and exporter of any destructive device, or any motion picture or television studio using destructive devices in the conduct of its business, shall obtain a permit for the conduct of that business from the Department of Justice.

(b) Any person, firm, or corporation not mentioned in subdivision (a) shall obtain a permit from the Department of Justice in order to possess or transport any destructive device. No permit shall be issued to any person who meets any of the following criteria:

- (1) Has been convicted of any felony.
- (2) Is addicted to the use of any narcotic drug.
- (3) Is a person in a class prohibited by Section 8100 or 8103 of the Welfare and Institutions Code or Section 12021 or 12021.1 of this code.

(c) Applications for permits shall be filed in writing, signed by the applicant if an individual, or by a member or officer qualified to sign if the applicant is a firm or corporation, and shall state the name, business in which engaged, business address and a full description of the use to which the destructive devices are to be put.

(d) Applications and permits shall be uniform throughout the state on forms prescribed by the Department of Justice.

(e) Each applicant for a permit shall pay at the time of filing his or her application a fee not to exceed the application processing costs of the Department of Justice. A permit granted pursuant to this article may be renewed one year from the date of issuance, and annually thereafter, upon the filing of a renewal application and the payment of a permit renewal fee not to exceed the application processing costs of the Department of Justice. After the department establishes fees sufficient in amount to cover processing costs, the amount of the fees shall only increase at a rate not to exceed the legislatively approved cost-of-living

1 adjustment for the department.

2 (f) Except as provided in subdivision (g), the Department of Justice
3 shall, for every person, firm, or corporation to whom a permit is issued
4 pursuant to this article, annually conduct an inspection for security and
safe storage purposes, and to reconcile the inventory of destructive
devices.

5 (g) A person, firm, or corporation with an inventory of fewer than five
6 devices that require any Department of Justice permit shall be subject to
7 an inspection for security and safe storage purposes, and to reconcile
inventory, once every five years, or more frequently if determined by
the department.

8 (h) Subdivisions (f) and (g) shall not apply to individuals possessing an
9 assault weapon pursuant to a permit issued by the Department of Justice
for noncommercial purposes.

10 [CONSTITUTIONAL PREEMPTION BY 12301 ET SEQ.]
11

12 96. As already alleged, a number of the plaintiffs desire to sell and/or transfer
13 LCF's that are prohibited by CCC, but are otherwise permitted to be sold, offered or
14 displayed for sale, given, lent or transferred within the state of California. But the
15 Ordinance purports to flatly prohibit a person from selling, offering or displaying for
16 sale, giving, lending or transferring ownership of the firearms it covers and deems
17 highly destructive -- even though the Legislature, having reviewed the subject matter,
18 has not so regulated them, choosing to expressly exclude them by setting the caliber
19 limit at anything greater than .60 caliber, instead of .50 caliber.

20 97. None of the exceptions within Penal Code section 12305 or licenses
21 provided in the state legislative scheme appear in or apply to the firearms regulated
22 under the Ordinance, which is therefore contradictory to the State scheme. This is
23 because the State expressly exempts from such licenses firearms that can fire
24 cartridges that are sixty calibers or less. Thus the Ordinance conflicts with state law
25 by creating a licensing and regulation scheme for the firearms expressly exempted
26 from Penal Code section 12301 because the State deemed them to have legitimate
27 hunting and target uses for the general public.

28 98. The Ordinance conflicts with existing law. The Ordinance lowers the

1 level of "large caliber firearms" or "destructive devices" to .50 caliber, which is
2 below the expressed lower limit of large caliber firearms set by the State legislature
3 at .61 caliber. The impermissible effect of the Ordinance is to create a class of
4 firearms of lesser caliber that persons with "Destructive Device Permits" (which
5 allows the acquisition of "large caliber firearms") cannot acquire. Firearms of less
6 than .50 caliber may be sold or transferred within CCC without a Dangerous
7 Weapons Permit, firearms between .50 caliber and .60 caliber are prohibited from
8 being sold or transferred to persons with or without a Dangerous Weapons Permit,
9 while firearms of calibers exceeding .60 caliber may be sold or transferred to persons
10 with a permit. The fact that lesser calibers are completely prohibited, regardless of
11 whether the persons acquiring the firearm possesses a Destructive Device Permit for
12 the acquisition of firearms greater than .60 caliber creates a conflict in that persons
13 with such permits may not acquire lesser caliber firearms (i.e. .50 - .60 caliber
14 firearms) unless they fall within one of the narrow exemptions provided under the
15 ordinance.

16 99. The Ordinance intrudes into an area that is fully occupied by general law
17 where the legislature has impliedly manifested its intent to fully occupy the area in
18 light of the following indicia:

19 • The subject matter regulating firearms based upon caliber size and their
20 destructive capabilities has been completely covered by general law as to clearly
21 indicate that it has become exclusively a matter of state concern.

22 • The subject matter regulating firearms based upon caliber size and their
23 destructive capabilities has been covered by general law couched in such terms as to
24 indicate clearly that a paramount state concern will not tolerate further or additional
25 local action.

26 • The subject matter regulating firearms based upon caliber size and their
27 destructive capabilities has been covered by general law, and the subject is of such a
28 nature that the adverse affect of a local Ordinance on the transient citizens of the

1 state outweighs the possible benefit to the locality.

2 100. That the Ordinance is a regulation on caliber size and purported
3 destructive capabilities is apparent in the Ordinance's history: In the motion to draft
4 the ordinance, CCC cites the destructive capabilities of LCF's as the "background"
5 for the proposal to draft a LCF ban. Specifically, the "background" of the proposal
6 states:

7 . . . The .50 caliber sniper rifle has *five times the muzzle power of a*
8 *.357 magnum handgun, and can penetrate nearly eight inches of*
9 *concrete from a distance of 400 yards. Originally designed for heavy*
10 *military use, all types of .50 caliber ammunition are readily available to*
11 *civilians in the United States and thus easily available to foreign and*
12 *domestic terrorists. With such destructive powers, .50 caliber sniper*
13 *rifles are no more regulated than hunting rifles and less regulated than*
14 *handguns. . . . (Emphasis added.)*

15 101. The final ordinance included "findings in support of Ordinance No
16 2004-10 (Large Caliber Firearms)." These "findings" conflict with Penal Code
17 section 12301 et seq in their emphasis on the destructive capabilities:

18 • The design of the .50 caliber sniper rifle enables the destruction
19 of aircraft, heavy machinery, and infrastructure from long ranges.
20 [Compare ¶58 "The tremendous destructive potential of these weapons
21 make them unfit for use outside the confines of a military reservation;"
22 ¶65 "Assembly Bill 1326 deals with weapon and devices which are
23 commonly referred to as "military-type weapons" and "heavy
24 weapons"; such weapons are referred to as Destructive devices."]

25 • The .50 caliber sniper rifle was originally designed for use in
26 the military but is increasingly sold in the domestic civilian market.
27 [Compare ¶58 "... there are no statutes regulating the sale or
28 possession of military armaments;" ¶65 "... there are presently no laws
in California which regulate the military surplus and similarly large
weapons which are available on the open market."]

• Ammunition for the .50 caliber sniper rifle has more than seven
times the power on impact as the .30-06, five times that of the .308, and
more than three times that of the .338. [Compare ¶65 "These military
weapons and similar devices are extremely hazardous and possess great
destructive capacity."]

• The .50 caliber sniper rifle uses different types of ammunition,
including ball ammunition, armor piercing ammunition, and armor-
piercing-incendiary ammunition. Ball ammunition is for use against
personnel and light material targets. Armor-piercing ammunition is for
use against armored aircraft and lightly armored vehicles, concrete
shelters, and other bullet-resisting targets. Armor-piercing-incendiary
ammunition is tipped with phosphorus and explodes on impact. [*Id.*]

• One ball cartridge can penetrate two inches of concrete from
220 yards and one inch of concrete from 1,640 yards. From 38 yards,
50 rounds of ball ammunition can penetrate 10 inches of concrete and

1 15 rounds can penetrate 12 inches of a triple brick wall. One armor-
 2 piercing cartridge can penetrate one inch of armor plate from 220 yards
 and 0.3 inches of armor plate from 1,640 yards. [*Id.*]

3 [CONSTITUTIONAL PREEMPTION - 12070 ET SEQ.]

4 102. The Ordinance provides the following exception to its prohibition against
 5 transfers of "large caliber firearms:"

6 An entity or establishment engaged in the business of motion picture,
 7 television, or video production, provided that the large caliber firearm is
 8 used only as a prop during the course of motion picture, television, or
 9 video production, is secured from unauthorized use, and the person
 charged with maintaining custody of the firearm while it is not in use
 maintains a current Certificate of Eligibility issued by the State of
 California.

10 (Contra Costa County Municipal Code Section 55-22.008(b)(10).)

11 103. The Ordinance duplicates existing law. Penal Code section 12070(a)
 12 provides that no person shall sell, *lease*, or transfer firearms unless he or she has
 13 been issued a license pursuant to Section 12071. Any person violating this section is
 14 guilty of a misdemeanor. California Penal Code Section 12070(b)(17) provides an
 15 exception to this rule: "... [Penal Code section 12070](a) does not include ...[t]he loan
 16 of an unloaded firearm or the loan of a firearm loaded with blank cartridges for use
 17 solely as a prop for a motion picture, television, video production, entertainment or
 18 theatrical event. To the extent that the Ordinance provides an exception for a firearm
 19 that "is used only as a prop during the course of motion picture, television, or video
 20 production," the Ordinance duplicates existing law.

21 104. The Ordinance conflicts with existing law. The Ordinance exception
 22 requires a Certificate of Eligibility, while the Penal Code does not. The Ordinance
 23 requires that the firearm be "secured from unauthorized use, while the Penal Code
 24 does not. These two additional requirements conflict with the State's intention to
 25 facilitate motion picture, video and theatrical productions.

26 105. The Ordinance intrudes into an area that is fully occupied by general law
 27 where the legislature has impliedly manifested its intent to fully occupy the area in
 28 light of the following indicia:

1 • The subject matter regulating licensing exemptions for motion
2 picture, television, and theatrical production has been completely covered by
3 general law as to clearly indicate that it has become exclusively a matter of
4 state concern.

5 • The subject matter regulating licensing exemptions for motion
6 picture, television, and theatrical production has been covered by general law
7 couched in such terms as to indicate clearly that a paramount state concern
8 will not tolerate further or additional local action.

9 • The subject matter regulating licensing exemptions for motion
10 picture, television, and theatrical production has been covered by general law,
11 and the subject is of such a nature that the adverse affect of a local Ordinance
12 on the transient citizens of the state outweighs the possible benefit to the
13 locality.

14 [GOVERNMENT CODE SECTION 53071 PREEMPTION]

15 106. The State of California has expressly and implicitly deprived CCC of the
16 powers to regulate firearm “destructive devices.” California Government Code
17 section 53071 makes state law the exclusive arbiter as to any firearm whose sale or
18 possession has been permitted, excluded, and/or licensed under state law:

19 It is the intention of the Legislature to occupy the whole field of
20 regulation of the registration or licensing of commercially manufactured
21 firearms as encompassed by the provisions of the Penal Code, and such
22 provisions shall be exclusive of all local regulations, relating to
registration or licensing of commercially manufactured firearms, by any
political subdivision

23 The Ordinance is a licensing law preempted by Government Code 53071, in part
24 because it prohibits the purchasing and other receipt of what it defines as LCF’s by
25 all but 13 categories of potential recipients. Additionally, Government Code section
26 53071 applies because the Ordinance creates a licensing scheme mandating that
27 those who are required to use LCFs in motion picture studios, video and theater
28 productions first obtain a Certificate of Eligibility. This is contrary to state law,

1 which does not require any such certificate for motion picture, video or theatrical
2 production. Thus, the Ordinance creates an entirely new licensing scheme for the
3 entertainment industry doing business within the borders of Contra Costa County.

4 107. The State of California has demonstrated a legislative intent to
5 completely occupy the field of "Destructive Device" licensing and regulation.

6 108. The State of California has demonstrated a legislative intent to
7 completely occupy the field of "motion picture, video and theatrical production"
8 licensing, exemptions, and regulation as it relates to firearm acquisition and
9 disposition.

10 109. Furthermore, as to the broad area of firearms sales, the Legislature has
11 enacted a comprehensive and detailed regulatory scheme (Pen. Code §§12070-
12 12084) which requires the licensing of firearms dealers, places numerous restrictions
13 on firearms sales, and mandates the furnishing of identification information by each
14 purchaser.

15 110. The state has so thoroughly occupied this field that regulating firearms
16 sales is now beyond the reach of local governments. Cities and counties have been
17 charged with the execution of the State's program for the business licensing of
18 firearms dealers, but their role is ministerial in nature. (Pen. Code §12071.)

19 111. By the same token, the Legislature has enacted a host of laws against
20 possession or sale of particular firearms it deemed to be contrary to the public
21 welfare. The following provisions of the Penal Code show that the state has regulated
22 so comprehensively as to exclude local prohibition of the sale of commercially
23 manufactured firearms: Penal Code section 12020 outlaws possession of
24 unconventional firearms including cane guns, wallet guns, short barreled rifles and
25 shotguns and high capacity magazines or firearms using high capacity magazines;
26 section 12090ff outlaws sale or possession of firearms which have no serial number;
27 section 12125ff sets standards for "unsafe handguns" and prohibits their sale; section
28 12220 outlaws possession of sub-machine guns, machine guns and other fully

1 automatic weapons except for persons possessing DOJ permits; section 12275ff
 2 defines and prohibits the sale and unregistered possession of assault weapons. In
 3 addition, Article 7 of the Penal Code outlaws sale/possession of firearms and
 4 ammunition to and by minors, and Chapters 2.5, 2.6, 3.2 and 4-6 outlaws, or requires
 5 state permit for, "destructive devices", certain ammunition, use of firearms or other
 6 weapons in booby traps, tear gas weapons, "firearm devices", and requires training
 7 and a basic firearms safety certificate.

8 112. The California Supreme Court deems the frequency of amendment and
 9 re-enactment of state laws in a particular area as evidence of state occupation of the
 10 field. In fact, the statutes governing firearms possession and sale have received very
 11 extensive legislative attention.

12 113. Moreover the Legislature has repeatedly rejected proposals to authorize
 13 cities to enact gun-ban laws, e.g., A.B. 136 (Villaraigosa) 1997-98 session; A.B. 247
 14 (Scott) 1997-98 session; S.B. 643 (Polanco) 1997-98 session; A.B. 634 (Caldera)
 15 1995-96 session which was identical to A.B. 2706 (Caldera) rejected in the 1993-94
 16 session. Other approaches from the 1993-94 session included SB 1293 (Hayden),
 17 AB 2865 (Lee) and ABx 1 37 (Burton). The rationale on which the Assembly
 18 Committee on Public Safety rejected such efforts deserves particular attention:

19 The Legislature, in enacting pre-emption statutes, has expressed its
 20 intent for the need for *uniform statewide standards relating to . . .*
 21 *firearms, [a subject] already involving extensive and comprehensive*
 22 *regulation by the state.* The need for existing statewide standard and
 23 the uniformity it provides could not be more necessary. Conversely,
 24 permitting any widespread additional local restrictions [regarding] . . .
 25 firearms could not possibly add anything other than general confusion to
 26 the regulatory scheme.

27 – Assembly Committee on Public Safety Hearing Memo
 28 on AB 634, 2 (Jan. 23, 1996) (emphasis added).

29 114. In recent years, localities have sought to have preemption effects of
 30 California firearms laws narrowed, to no avail: In 1999 the Legislature enacted SB
 31 15, the Unsafe Handgun Act (Pen. C §§ 12125 et seq.) whose purpose was to ban the
 32 sale of "Saturday Night Specials." It established criteria for handgun safety, defined

1 unsafe handguns and banned their sale as of Jan. 1, 2001. In enacting SB 15 the
2 Legislature was well aware of the existing local SNS Ordinances as to which the
3 Senate Public Safety Committee report stated: "This bill would appear to preempt
4 any such local Ordinance, both those already in existence and any proposed locally in
5 the future." Among the ways in which the Legislature became aware of the UHA's
6 preemptive effect is that its author and other legislators were informed by the City of
7 San Jose's lobbyist that as written (and eventually enacted) SB 15 would preempt all
8 these local Ordinances. At the request of the City of San Jose the author amended SB
9 15, adding a proviso stating that the local Ordinances would survive the UHA and
10 not be preempted. This proviso was, however, later stricken from SB 15 and the
11 UHA was enacted without it.

12 115. In sum, the existence of the .60 caliber ban specifically, and other state
13 firearms bans and regulations generally, demonstrates that the state has occupied the
14 field and localities have no authority to prohibit models or types of firearms in
15 general, or particular calibers of firearms in general.

16
17 **[DECLARATORY JUDGMENT ALLEGATION]**

18 116. There is an actual and present controversy between the parties to this suit
19 regarding the Ordinance's consistency with state law. Plaintiffs contend that the
20 Ordinance is unconstitutional, invalid and preempted because it conflicts with state
21 laws including the Destructive Device laws (Penal Code sections 12301 et seq.),
22 General Firearm Transfer Laws (Penal Code section 12070 et seq.) and Government
23 Code section 53071. Defendants deny and dispute this contention, wherefore
24 plaintiffs seek a declaratory judgment that the Ordinance is preempted because of its
25 inconsistency and conflict with state law.

26 ///

27 ///

1 [PRAYER]

2 WHEREFORE, plaintiffs seek the following relief:

3 1. Equitable relief enjoining enforcement of Contra Costa County Ordinance
4 2004-10 or expenditure of funds on it, and compelling CCC to repeal and/or de-
5 publish and refrain from publishing and enforcing Contra Costa County Ordinance
6 2004-10.

7 2. Declaratory relief as set out in the body of the petition;

8 3. That plaintiffs be awarded reasonable attorneys fees pursuant to Title 42
9 U.S.C. 1988 and Code of Civil Procedure section 1021.5, as well as costs of suit and
10 such other and further relief as the Court deems proper.

11
12 Plaintiffs demand a jury trial.

13
14 Date: June 2, 2004

TRUTANICH • MICHEL, LLP:

15 

16 C.D. Michel
17 Attorneys for Plaintiffs
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EXHIBIT A

ORDINANCE NO. 2004-10

LARGE CALIBER FIREARMS – CONVEYANCE PROHIBITED

The Contra Costa County Board of Supervisors ordains as follows (omitting the parenthetical footnotes from the official text of the enacted or amended provisions of the County Ordinance Code):

SECTION I. SUMMARY. This ordinance adds Chapter 54-22 to the County Ordinance Code to prohibit the sale of .50 caliber firearms in unincorporated areas of the County.

SECTION II. Chapter 54-22 is added to the County Ordinance Code, to read:

Chapter 54-22**LARGE CALIBER FIREARMS – CONVEYANCE PROHIBITED**

54-22.002 Purpose. The purpose of this chapter is to protect the health, safety, and general welfare of the residents of Contra Costa County by prohibiting the sale of .50 caliber firearms in unincorporated areas of the County. (Ord. 2004-10 § 2.)

54-22.004 Definitions. As used in this chapter, the following terms have the following meanings:

- (a) "Firearm" means any device, designed to be used as a weapon or modified to be used as a weapon, from which is expelled through a barrel a projectile by the force of explosion or other means of combustion.
- (b) "Large caliber firearm" means any rifle capable of firing a center-fire cartridge of .50 caliber or larger or .50 BMG caliber or larger either by designation or by actual measurement.
- (c) "Rifle" means any firearm that is designed or redesigned, made or remade, and intended to be fired from the shoulder and is designed to fire only a single projectile through a rifle bore for each single pull of the trigger. The term "rifle" does not include any shotgun. (Ord. 2004-10 §2.)

54-22.006 Conveyance Prohibited. No person shall sell, give, transfer ownership of, transfer, offer for sale, or display for sale any large caliber firearm. (Ord. 2004-10 § 2.)

54-22.008 Exemptions.

- (a) The provisions of this chapter do not apply to any of the following:
 - (1) Any sale or transfer of a firearm that is prohibited under state law.

- (2) The sale or transfer of any destructive device as defined in Section 12301 of the California Penal Code.
- (3) The sale or transfer of any assault weapon as defined in the California Penal Code.
- (4) Any firearm approved for sale pursuant to Section 12131 of the California Penal Code.
- (b) The provisions of Section 54-22.006 do not apply where the purchaser or transferee is any of the following:
 - (1) A law enforcement agency.
 - (2) An agency duly authorized to perform law enforcement duties.
 - (3) A state or local correctional facility.
 - (4) A person described in Section 12302 or 12322 of the California Penal Code.
 - (5) A federal law enforcement officer.
 - (6) A person who is properly identified as a full-time paid peace officer, as defined in Section 830.1, 830.2, 830.4, or 830.5 of the California Penal Code, and who is authorized to, and does, carry a firearm during the course of his or her employment as a peace officer.
 - (7) A firearms dealer who has been issued a Federal Firearms License, a Certificate of Eligibility by the State of California, and a permit by the County of Contra Costa to engage in the retail sale of firearms.
 - (8) A purchaser of a curio or collector firearm. A firearm will be deemed a curio or collector firearm only if it falls within one of the following categories:
 - (A) It was manufactured before 1899.
 - (B) It is classified as a curio or relic pursuant to Title 27 Code of Federal Regulations section 178.11, and the purchaser maintains a current federal firearms collector license.
 - (C) It is a muzzle-loading firearm.
 - (9) A federal, state, or local historical society, museum, or institutional collection that is

open to the public, provided that the large caliber firearm is used for display purposes, is secured from unauthorized use, and is unloaded.

- (10) An entity or establishment engaged in the business of motion picture, television, or video production, provided that the large caliber firearm is used only as a prop during the course of motion picture, television, or video production, is secured from unauthorized use, and the person charged with maintaining custody of the firearm while it is not in use maintains a current Certificate of Eligibility issued by the State of California.
- (11) A person who obtains title to a large caliber firearm by bequest or intestate succession. (Ord. 2004-10 § 2.)

54-22.010 Enforcement. A violation of this chapter is an infraction. If a violation of this chapter occurs, the County may seek compliance by any remedy allowed under this code and any other remedy allowed by law. (Ord. 2004-10 § 2.)

SECTION III. EFFECTIVE DATE. This ordinance becomes effective 30 days after passage, and within 15 days after passage shall be published once with the names of supervisors voting for or against it in the Contra Costa Times, a newspaper published in this County.

PASSED on _____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: JOHN SWEETEN,

Clerk of the Board of Supervisors
and County Administrator

Board Chair

By: _____

Deputy

[SEAL]

TLG:

H:\2004\Board of Supervisors\large caliber firearms ord - rifle.wpd

FINDINGS IN SUPPORT OF ORDINANCE NO. 2004-10 (Large Caliber Firearms)

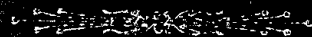
1. The design of the .50 caliber sniper rifle enables the destruction of aircraft, heavy machinery, and infrastructure from long ranges.
2. The .50 caliber sniper rifle was originally designed for use in the military but is increasingly sold in the domestic civilian market.
3. The .50 caliber sniper rifle has the capacity to accurately hit targets from a distance of one mile and has a maximum range of approximately four miles.
4. Ammunition for the .50 caliber sniper rifle has more than seven times the power on impact as the .30-06, five times that of the .308, and more than three times that of the .338.
5. The .50 caliber sniper rifle uses different types of ammunition, including ball ammunition, armor-piercing ammunition, and armor-piercing-incendiary ammunition. Ball ammunition is for use against personnel and light material targets. Armor-piercing ammunition is for use against armored aircraft and lightly armored vehicles, concrete shelters, and other bullet-resisting targets. Armor-piercing-incendiary ammunition is tipped with phosphorus and explodes on impact.
6. One ball cartridge can penetrate two inches of concrete from 220 yards and one inch of concrete from 1,640 yards. From 38 yards, 50 rounds of ball ammunition can penetrate 10 inches of concrete and 15 rounds can penetrate 12 inches of a triple brick wall. One armor-piercing cartridge can penetrate one inch of armor plate from 220 yards and 0.3 inches of armor plate from 1,640 yards.
7. The United States Government Accounting Office, Office of Special Investigations, determined that .50 caliber rifles have been linked to terrorist groups, international drug cartels, domestic drug dealers, and violent criminals.
8. Contra Costa County has a high concentration of chemical and refinery facilities, which could serve as targets of terrorist attacks with .50 caliber rifles.

EXHIBIT B

THE DOUBLE GUN



JOURNAL



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Pair Hussey Ltd. 12-bore Sidelock Ejector Shotguns \$24,500
Pair Boss 12-bore Sidelock Ejector Shotguns 28" \$29,500
Rigby 12-bore Sidelock Ejector Shotgun 27" \$13,950
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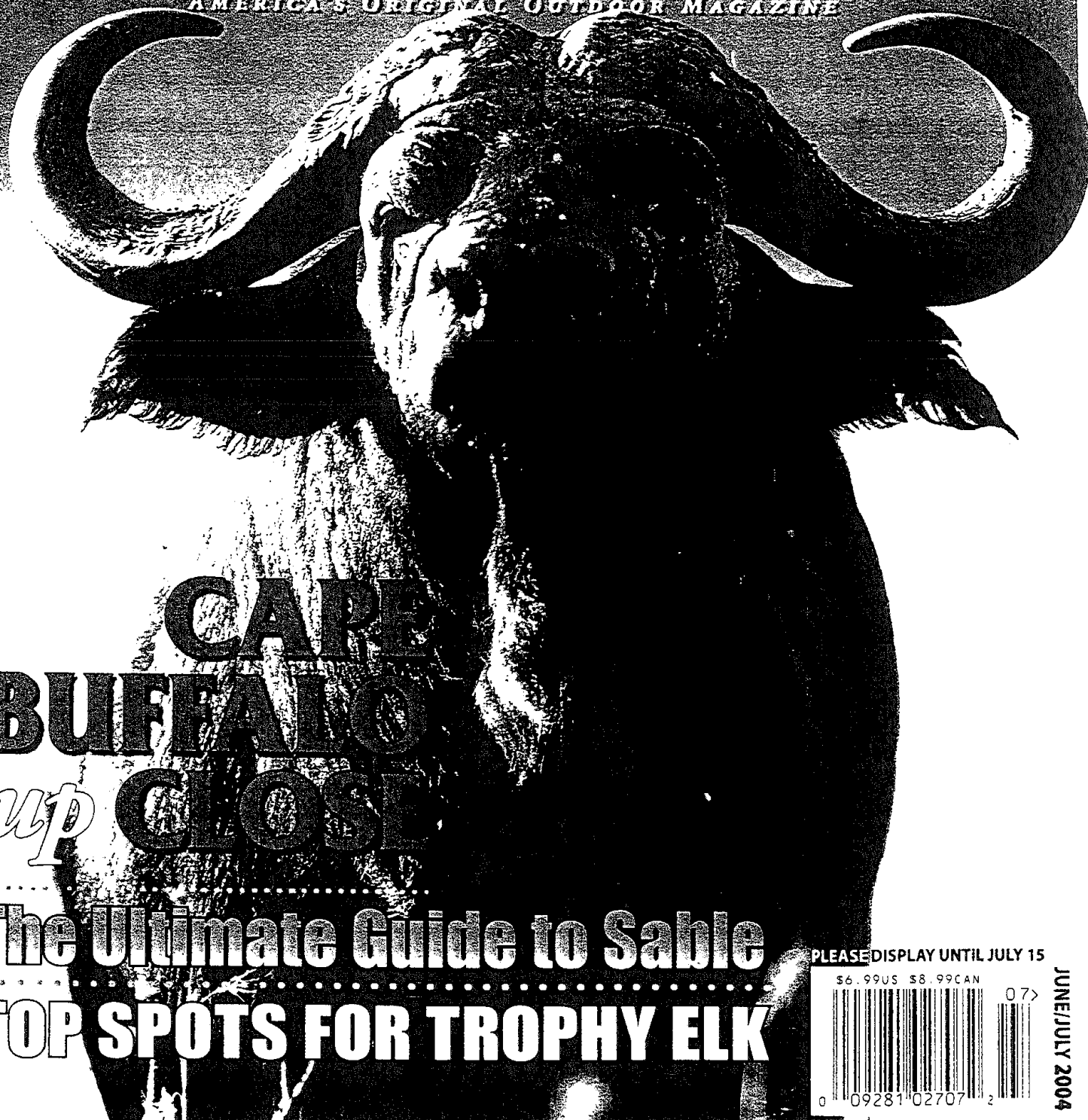
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EXHIBIT C

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